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1 RECORD OF ORAL HEARING
2 UNITED STATES PATENT AND TRADEMARK OFFICE
3
4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES

6
7 *EX PARTE* IVAN A. TODOROV, LOUIS D. ROSS, MICHAEL
8 HADRICH, and RAINER HESSMER

9
10 Appeal 2008-6171
11 Application 09/954,508
12 Technology Center 2400
13

14 Oral Hearing Held: February 11, 2009
15

16 Before JOHN C. MARTIN, JEAN R. HOMERE, and CAROLYN D.
17 THOMAS, *Administrative Patent Judges*.

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19
20 APPEARANCES:

21 ON BEHALF OF THE APPELLANTS:

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1 The above-entitled matter came on for telephonic hearing on
2 Wednesday, February 11, 2009, at The U.S. Patent and Trademark Office,
3 600 Dulany Street, Alexandria, Virginia, before Lorie B. Allen, Notary
4 Public.

5

6 MR. JOY: Members of the Board, good morning. My name is Mark
7 Joy. Registration No. 35,562. I represent the Appellants, Todorov, et al,
8 and the Assignee, Invensys Systems, Inc., that has an appeal, and the U.S.
9 Application Serial number is 09/954,508, filed on September 14, 2001.

10 Before going into any specific arguments, just to give you a road map,
11 what I will do initially is briefly describe the claimed invention. I will then
12 briefly describe the teachings of Dorrance and Lim, which are the two
13 references that have been cited in the final Office Action, and lastly, I'll go
14 over the primary points of the previously submitted cases, including
15 particularly certain requests that I made in the Appellants' Reply.

16 Generally, I think that our briefs were relatively clear with the
17 shortcomings of the current rejection. I do have -- I'm still kind of confused
18 by the application of Lim, and hopefully, the Board might be able to shed
19 some light on how that applies to the Dorrance reference.

20 I've read it over multiple times and I'm still having ample difficulty in
21 understanding the relationship between the two and how Lim somehow
22 teaches the required modifications to the referenced Dorrance.

23 JUDGE MARTIN: Can we pursue that right now? It seems to me at
24 least with respect to claim one, all the Examiner is relying on Lim for is a
25 teaching of a plurality of clients; is that correct?

1 MR. JOY: Right. That's my understanding.

2 JUDGE MARTIN: Do we even need a plurality of clients? Does the
3 claim require that? It says "client applications." Couldn't that be one client
4 with several applications?

5 MR. JOY: I agree with you 100 percent. The only thing in the back
6 of my mind that I'm wondering is whether there's a language issue and that
7 he means something other than what he's written.

8 It's never been an issue whether or not there are multiple clients. In
9 fact, my brief admits that multiple clients are not the issue. It's really the
10 invention is directed to the way in which -- about the architecture of a server,
11 how it's set up to handle differing client protocols, not requests from
12 different clients, rather, the different protocols.

13 Again, I think that it's relatively clear. If I may, I think that the claims
14 track what has been disclosed in the combination of Figures 2 and 3,
15 especially Figure 3 of Applicants' Application, where you have certain
16 components and one of the key components with regard to this claimed
17 invention is the multiple modules, protocol specific modules, that are used to
18 handle various clients' data exchange protocols.

19 JUDGE MARTIN: Let me interrupt again. How are we supposed to
20 construe the term "module?" I'm not sure I understand the scope of that
21 term.

22 MR. JOY: There's no specific definition for that. On the other hand,
23 there are some examples given. That would be a plugin, for instance. That's
24 the specific example given in the illustrative examples.

1 I would say a “module” would be something that isn’t integral to the
2 main application. In this case, it would be the data access server engine,
3 which allows the accessibility, which is discussed in the Patent Application.

4 JUDGE MARTIN: Would you say that the term “module” suggests
5 that the module is detachable from the rest of the server?

6 MR. JOY: It is. For instance, DLLs are another example of modules.

7 JUDGE MARTIN: You’re talking about a piece of software there;
8 right? A DLL?

9 MR. JOY: Yes, it is.

10 JUDGE MARTIN: I’m not sure I understand what “detachable”
11 means in that context.

12 MR. JOY: “Detachable” sounds like you would actually be taking it
13 away, but actually the idea behind this is to allow incorporation after the fact
14 of support for new modules -- I’m sorry -- new data exchange protocols as
15 they’re developed.

16 In this example, for instance, if a system was initially set up to only
17 handle DDE, which is a data exchange protocol, and at a later time, a
18 software system user wanted to add support for OLE process control, that’s
19 OPC, all they would have to do is install another software module, and it
20 would be incorporated into the program.

21 That’s what I consider being the modular approach.

22 JUDGE MARTIN: All right.

23 MR. JOY: That is the distinction between what’s disclosed in the
24 Applicants’ Application and Dorrance. Dorrance shows a single integral
25 converter.

1 JUDGE MARTIN: I'm sorry. We're losing you.

2 MR. JOY: I'm sorry. Converter 65 in Dorrance. From the disclosure
3 that I understand, that particular thing supports multiple protocols, yet it's all
4 in one single module, one program code.

5 JUDGE MARTIN: We don't really know, do we, how that's
6 implemented?

7 MR. JOY: As I called it, it's a black box. It doesn't teach you one
8 way or another how it's done. It certainly doesn't state there is a modular
9 approach to it, that it supports multiple protocols, message protocols.

10 JUDGE MARTIN: All right. I have a question about the abstraction
11 layer. The claim says the abstraction layer comprises a set of operations
12 callable by codes of client data engine protocol modules. When you say the
13 layer comprises a set of operations, we're talking software here; right?

14 MR. JOY: Yes. This invention is completely implemented on a
15 server, server hardware running software.

16 JUDGE MARTIN: When you say "a set of operations," that's just
17 some code that can be called up?

18 MR. JOY: Right. Just to make sure you understand the abstraction
19 layer, the idea is that there are a number of clients out there, and I'll use an
20 example shown in Figure 3 or Figure 2. Some of them use DDE. Some of
21 them use SuiteLink. Some of them use OPC to talk to the server, to request
22 the information that is stored on the other side of the server. That's the
23 process control information.

24 What happens is each of these modules is configured or programmed
25 to talk to the client in the particular data exchange protocol that's been used

1 by the client, and then converted into a generic one, which is handled by the
2 abstraction layer.

3 The abstraction layer would be the super set of functional calls that
4 are used to access data from the process control system.

5 JUDGE MARTIN: All right.

6 JUDGE HOMERE: This is Judge Homere. Based on what you're
7 saying, it is apparent to me that the modules appear to be blocks of codes
8 within the program. Would that be a reasonable interpretation of the
9 modules?

10 MR. JOY: The modules are incorporated into the server, which has a
11 whole bunch of different processes that are running, and some of those
12 processes would be the ones which are associated with what's been
13 identified as plugins or modules.

14 JUDGE HOMERE: The modules -- I guess you're not answering my
15 question. The modules, can it be reasonably interpreted as codes, a block of
16 codes, within a program?

17 MR. JOY: A block of code within a program?

18 JUDGE HOMERE: A block of codes within the program; yes.

19 MR. JOY: It would not be integral to that server program; no. That's
20 the distinction. It's incorporated into a server but it's run as a separate or it's
21 provided as a separate set of code.

22 JUDGE HOMERE: So, the modules are codes?

23 MR. JOY: They are codes, but they aren't part -- when you said the
24 "program," I just want to make sure that you understood it's a distinct set of
25 files and it's run -- looking at it from the point of view of a software

1 provider, there would be certain code that's associated with each of those
2 plugins, certain modules, the DDE plugin, the OPC plugin, the SuiteLink
3 plugin, and that would be separate code from the data access server engine
4 code, but all of that is running on a single computer.

5 If you're familiar, for instance, with dynamically linked libraries,
6 plugins operate very similar to those.

7 It incorporates these modules into its overall execution.

8 JUDGE MARTIN: Is it fair to say that the module -- a module can be
9 removed without affecting the other modules or the operation of the rest of
10 the server?

11 MR. JOY: Absolutely. The way you would do that, it would be some
12 type of configuration process. You'd have to shut your program down likely
13 to do it and restart it. That is really beyond at least my knowledge of how it
14 actually operates. I probably have spoken beyond my realm of knowledge.

15 Again, the main point is they just in a way kind of independently are
16 the main engine code, and taking it away does not disrupt the operation of
17 the engine and the rest of the functional modules of the server.

18 JUDGE MARTIN: Right. Would you like to address the process
19 control system language for us?

20 MR. JOY: I guess the one thing is in my wildest dreams, I would
21 never consider an e-mail system to be a data access server of the type, and
22 I'll admit I did not get -- what do you call it -- declaration of one of the
23 inventors saying that there's no way in the world it could be one, but you
24 know, as I sit here today, I'd say that a data access server is understood by
25 engineers in the process control art to be this server that sits between people

1 that need -- if I could switch to Figure 1, I think it's easier if we can show
2 you a picture here.

3 In Figure 1 of the Application, you see there's an alarm server, a
4 historian, and an HMI, which would be human/machine interface
5 application. Each of those would be considered clients of the data access
6 server. They request data of a process control system. On the other side,
7 there is control processors and field devices.

8 When you use the term "data access server" in the area of industrial
9 process controls, people understand it to mean this sort of device that sits
10 between consumers of process data and providers of process data.

11 An e-mail system just has no relevance in my mind to a data access
12 server, other than if you were to use those terms without looking at the
13 Patent Application itself and its disclosure.

14 In fact, I specifically put the words "process data access server" in the
15 front, if you look at the claims. It doesn't just say "data access server." It's
16 not meant to mean any type of server that can access data in the world.

17 JUDGE HOMERE: Do you have a definition for that in the
18 specification?

19 MR. JOY: I can find it, data access server, 50.

20 JUDGE HOMERE: What page is that?

21 MR. JOY: I have actually the published Application in front of me.
22 It's with the description of Figure 1. Item 50.

23 JUDGE MARTIN: It refers to the data access server but I don't see
24 where that terminology is explained.

1 MR. JOY: It says in paragraph 29, for instance, the data access server
2 is interposed between the supervisory control level 16s processing nodes and
3 the lower levels of the process control system. The data access server
4 receives and/or extracts data from the field devices 20 and/or control
5 processors 30, and provides corresponding data to processing nodes at
6 supervisory control level of --

7 JUDGE HOMERE: What you are reading is explaining where the
8 data access server is located, but that by no means is a definition of what the
9 data access server is. I'm at a loss --

10 MR. JOY: It says there are functions here. It's not just its location. It
11 says it receives and/or extracts data from the field devices and provides that
12 data to a set of clients.

13 JUDGE MARTIN: That describes a specific example of a data access
14 server. It doesn't limit that term to what's described.

15 MR. JOY: I would say that in view of the specification, there is a
16 limit to how far you could go. I'm not here actually to argue today. You
17 know, if you believe that an e-mail server is a process data access server,
18 including that word "process" in front, which is used in the claim, then you
19 know, so be it. Hopefully, the claims, when they're issued, will be
20 interpreted broadly.

21 It certainly was not the intention when the claims were written and
22 when disclosure was made and the description of the data access server was
23 initially put on paper.

24 I know the rules give a certain amount of leeway to the Patent Office.
25 I'm not going to begrudge that point really.

1 JUDGE MARTIN: Counsel, let me see if we have any other
2 questions. No?

3 Are there any other points you'd like to address?

4 MR. JOY: The main concerns I have I have are in the brief, in my
5 initial appeal brief and in the Reply responding to the Answer certain things
6 that I put in bold. I certainly would hope that's addressed.

7 I don't feel like certain arguments made by Applicants were addressed
8 by the Answer, the Examiner's Answer. As I mentioned right at the start of
9 this, I was confused by the application of Lim to Dorrance.

10 I think I identified particular elements that were not present in
11 Dorrance and were admitted as such by the Examiner as not being present.

12 That's all I really have to say in closing. My primary reason for
13 requesting the oral hearing was if the Board had any further insights about
14 the meaning of Lim and its application because I honestly see no relevance
15 to its teachings to Dorrance, the claimed invention.

16 That's it.

17 JUDGE MARTIN: All right. Thank you, counsel. We'll take the
18 case under advisement.

19 MR. JOY: Thank you very much.

20 (Whereupon, the proceedings were concluded on February 11, 2009.)